

## **2005 DRAFTING REQUEST**

### **Bill**

Received: **12/02/2004**

Received By: **csundber**

Wanted: **As time permits**

Identical to LRB:

For: **Sheila Harsdorf (608) 266-7745**

By/Representing: **Chris Schneider**

This file may be shown to any legislator: **NO**

Drafter: **mdsida**

May Contact:

Addl. Drafters: **mlief**

Subject: **Criminal Law - drugs  
Real Estate - miscellaneous  
Buildings/Safety - misc.**

Extra Copies:

Submit via email: **YES**

Requester's email: **Sen.Harsdorf@legis.state.wi.us**

Carbon copy (CC:) to:

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### **Pre Topic:**

No specific pre topic given

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### **Topic:**

Methamphetamine

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### **Instructions:**

See Attached

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### **Drafting History:**

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/?							
/P1	csundber 01/05/2005 mdsida 01/11/2005	wjackson 01/15/2005	pgreensl 01/18/2005	_____	lnorthro 01/18/2005		
/P2	mdsida 02/10/2005	wjackson 02/11/2005	rschluet 02/11/2005	_____			S&L Crime

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
/1	mdsida 02/11/2005	wjackson 02/11/2005	rschluet 02/11/2005	_____	lemery 02/11/2005	lnorthro 02/23/2005	

FE Sent For:

&lt;END&gt;

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Methamphetamine

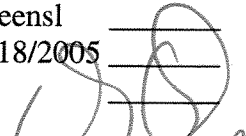
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### Instructions:

See Attached

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### Drafting History:

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/P1	csundber 01/05/2005 mdsida 01/11/2005	wjackson 01/15/2005 /p2 2/11 Wlj 1 Wlj 2/10	pgreensl 01/18/2005		Inorthro 01/18/2005		

FE Sent For:

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Identical to LRB:

For: Sheila Harsdorf (608) 266-7745

By/Representing: Chris Schneider

This file may be shown to any legislator: NO

Drafter: csundber

May Contact:

Addl. Drafters:

Subject: Trade Regulation - other

Extra Copies:

Submit via email: YES

Requester's email: Sen.Harsdorf@legis.state.wi.us

Carbon copy (CC:) to:

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### Pre Topic:

No specific pre topic given

---

### Topic:

Restrictions on sale of pseudoephedrine and recordkeeping requirements

---

### Instructions:

See Attached

---

### Drafting History:

<u>Vers.</u>	<u>Drafted</u>	<u>Reviewed</u>	<u>Typed</u>	<u>Proofed</u>	<u>Submitted</u>	<u>Jacketed</u>	<u>Required</u>
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/?	csundber	1 WJ 1/15	X	X			
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FE Sent For:

<END>

## Sundberg, Christopher

**From:** Dsida, Michael  
**Sent:** Tuesday, November 30, 2004 3:51 PM  
**To:** Schneider, Christian  
**Cc:** Sundberg, Christopher  
**Subject:** RE: Meth Ingredients Legislation

6-7745

Even though this request relates to controlled substances, from our perspective, it is a trade regulation draft, so I am forwarding it to Chris Sundberg, who drafts in that area.

Mike

-----Original Message-----

**From:** Schneider, Christian  
**Sent:** Tuesday, November 30, 2004 1:02 PM  
**To:** Dsida, Michael  
**Subject:** Meth Ingredients Legislation

Mike,

I believe we may have discussed this briefly last session: the idea of making meth ingredients more difficult to purchase. Oklahoma passed a law a few years ago that they claim has resulted in a significant drop in meth labs. Feel free to check their website out at:

<http://www.obn.state.ok.us/>

There is a copy of their law, plus the press releases are instructive, too. Essentially, it looks like their law requires pseudoephedrine be sold behind the counter or kept in a secure location, and the purchaser must sign a log when a purchase is made. Pharmacies were given a grace period to comply.

Any chance we could replicate something like this in Wisconsin?

-Chris Schneider  
Senator Harsdorf's Office

- ① P cannot be sold except by pharmacy; other sellers must secure stock on hand and either return it to the mfr/dist or turn over for destruction
- ② Pharmas must require photo ID w/ DOB and log name, amount, date, signature.
- ③ 9-gram per month limit except w prescription.
- ④ Does not apply to P mixed with other active ingred and in liquid or gel form.
- ⑤ Registration with (state drug control agency) ?
- ⑥ Must maintain records

Ch 134 ?



# NOTICE

Effective July 1, 2003, Distributors and Manufacturers conducting business in Oklahoma or shipping products to Oklahoma are required to Register with the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control.

Pursuant to State Law, any business or individual who is a manufacturer, wholesaler or distributor of any product(s) containing Pseudoephedrine is required to register with the Oklahoma State Bureau of Narcotics and Dangerous Drugs Control (OBNDD). Failure to obtain registration is a crime and punishable by a fine up to \$10,000.

DEA Registrants are reminded that compliance with applicable state law is required by the Controlled Substances Act and that failure to comply may result in action being taken by the Drug Enforcement Administration (DEA).

Oklahoma registration is \$100 per year and must be paid by August 15, 2003. After August 15, 2003, individuals/businesses found in violation of Oklahoma State Law are subject to criminal, administrative, and/or civil penalties. Individuals/businesses who maintain a current (state) Controlled Drug Registration in Oklahoma will be exempt from the fee; however, are still required to register.

## **Criminals are currently using Pseudoephedrine products to clandestinely manufacture methamphetamine.**

Under Oklahoma State Law, It shall be unlawful for any person to knowingly sell, transfer, distribute, dispense, any product containing pseudoephedrine if the person knows that the purchaser will use the product as a precursor to manufacture methamphetamine or if the person sells, transfers, distributes or dispenses the product with reckless disregard as to how the product will be used. A violation of this section shall be a felony punishable by imprisonment in the State Penitentiary for a term of not more than 10 years. Title 63, Oklahoma Statute 2-333.

Under Federal Law, Pseudoephedrine is a List I Chemical. "Any person who possesses or distributes a listed chemical knowing, or having reasonable cause to believe that the listed chemical will be used to manufacture a controlled substance, except as authorized by this title, shall be fined in accordance with Title 18, or imprisoned not more than 20 years, or both."... Title 21, United States Code, Section 841(c)(2).

**Questions regarding Oklahoma State Registration, contact:  
Oklahoma State Bureau of Narcotics, Registration Section, (405) 521-2885**

Suspicious orders or transactions involving Pseudoephedrine products should be immediately reported to the OBNDD, the DEA, and your local law enforcement.

[www.obn.state.ok.us](http://www.obn.state.ok.us)  
[www.deadiversion.usdoj.gov](http://www.deadiversion.usdoj.gov)





# NOTICE



## GUIDELINES ANNOUNCED FOR NEW LAW AIMED AT HALTING METHAMPHETAMINE PRODUCTION

The Drug Enforcement Administration (DEA) and the Oklahoma Bureau of Narcotics (OBN) have seen a 12,000% increase in meth lab seizures in Oklahoma over the past 10 years. Pseudoephedrine tablets are used as the main ingredient in the manufacturing of methamphetamine. As a result, Oklahoma Governor Brad Henry signed House Bill 2176 into law April 6, 2004. This measure places **Pseudoephedrine Tablets** as a **Schedule V Controlled Dangerous Substance**, requiring a signature and photo I.D. prior to sale at a licensed Oklahoma pharmacy. **Gel Capsules, Liquid Capsules, and Liquid Preparations** would be *exempt* from this law.

As of April 6<sup>th</sup>, 2004:

1. **Businesses other than pharmacies must *immediately* stop selling pseudoephedrine *tablets*.** Furthermore, these businesses must remove the *tablets* from the shelves and place them in a secure location. Businesses will be given **30 days** to return the product or contact law enforcement to take possession of their remaining inventory to be submitted for destruction.
2. **Efforts are underway to eventually connect all pharmacies to a centralized computer database at OBN for tracking *tablet* pseudoephedrine sales to ensure clients are not exceeding the limit of 9 grams in a 30-day period without a prescription. Until then, Oklahoma pharmacies will be given **60 days** to get all pseudoephedrine *tablets* behind the counter and enact an in-store program for logging *tablet* pseudoephedrine sales.**

FOR QUESTIONS, CONTACT OBN AT 1-800-522-8031

OK - meth

- ① Presumption no bond
- ② No sales of P/<sup>tablets</sup> other than pharmacist or pharma tech  
Must take P off shelves + secure,  
then return to seller or have  
picked up by law enforcement  
for destruction
- ③ Centralized database @ DPN  
for tracking tablet sales to make  
sure customers do not exceed  
grams / 30 days
- ④ Pharmacies must log tablet  
sales, sold only behind counter
- ⑤ Mfrs wholesalers, dists, of P must  
register w DPN (\$100/yr)
- ⑥ Penalty for reckless sale of



**ERIC G. JOHNSON**  
DISTRICT ATTORNEY

## ST. CROIX COUNTY DISTRICT ATTORNEY

St. Croix County Government Center ♦ 1101 Carmichael Rd. ♦ Hudson, WI 54016  
Telephone: 715-386-4658 ♦ Facsimile: 715-381-4397

**Francis D. Collins**  
Assistant District Attorney  
**Keisha Cretsinger**  
Assistant District Attorney  
**Dennis W. Erickson**  
Assistant District Attorney  
**Kevin H. Gehler**  
Assistant District Attorney  
**Kathryn S. Grosdidier**  
Assistant District Attorney  
**David K. McQuillen**  
Assistant District Attorney  
**Jane Esbensen Moore**  
Office Administrator  

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**Ann Gustafson**  
Victim/Witness Coordinator  
**Kärn Rasmussen**  
Victim/Witness Specialist  
**Selena Peterson**  
Legal Advocate

July 19, 2004

Senator Sheila Harsdorf  
Room 3 South - State Capitol  
PO Box 7882  
Madison, WI 53707-7882

Dear Senator Harsdorf:

As I am sure you are aware, St. Croix County has a significant methamphetamine problem. I have enclosed the most recent Department of Justice map which indicates once again that St. Croix County has more than twice as many methamphetamine cases than any other county in this part of the state. And the meth cases in this part of the state outnumber meth cases for other parts of the state which, in most cases, are more populated.

It is my belief and understanding that once meth gets into an area that it will expand. In other words, if trends from other states apply to Wisconsin, the meth problem will be statewide in a number of years and the problems that we have in St. Croix County will be shared by other counties.

In an effort to get ahead of this problem, we have tried numerous courses of action. I've also been in contact with law enforcement agencies in other states where the meth problem has been significant. Missouri and Iowa have had huge meth problems over the years and, in fact, lead the country in actual numbers of meth cases. I've been in contact with these agencies with regard to specific legislation that attempts to address this problem. My office has reviewed this legislation from a variety of states (Illinois, Missouri, Kansas, Oklahoma, Minnesota) for thoughts and ideas that would assist Wisconsin with its meth problem. Again, I think it is important that we get in front of this problem prior to having the state of Wisconsin reach the meth levels of states such as Missouri and Iowa. I also think it is important, since we have a huge and at times overwhelming problem here in St. Croix County, that we take the lead in this effort. Madison and Milwaukee do not understand, nor do they have the problems that we have.

Therefore, my office has put together a proposed list of legislative changes and initiatives that we believe will effectively deal with this rising methamphetamine problem. Our primary concern is regulation that would address and regulate the sale of precursors, specifically Ephedrin and Sudafed.

The following is a list of legislative proposals my office would suggest:

### **POSSESSION OF PRECURSORS**

1. Kansas statute 65-7006 deals with the possession and intent issue when a person possesses numerous precursors. Specifically, the Kansas statute indicates that if a person is in possession of the precursors, the law allows a prosecutor to charge them with possession with intent to distribute methamphetamine, which would be a felony.

### **REGULATION OF SUDAFEDRINE**

2. Restricted legislation on the amount of Sudafedrine that could be purchased and possessed and also where and how it could be purchased. Oklahoma is setting the curve with its recently enacted legislation making Sudafedrine a regulated substance that can only be sold by pharmacies. The Oklahoma bill is House Bill 2176. I would also suggest that perhaps Sudafed could be changed to a Schedule V drug. I believe this would require a legislative change which would regulate the sale of Sudafed. I believe this is extremely important in that Sudafed is a main ingredient in methamphetamine and is currently obtained by theft or individuals buying numerous packets at a variety of stores. The regulation of a Schedule V substance would require the listing of individuals who buy certain amounts of Sudafed (perhaps more than three (3) packets). I believe the regulations already statutorily imposed under the sale of a Schedule V substance would require enough regulation to thwart the acquisition of large amounts of Sudafed and the making of meth.

### **POSSESSION OF LARGE AMOUNTS OF SUDAFED**

3. I would request that a possession of large amounts of Sudafed would constitute a crime. For example, in Missouri statute 195.235, indicates that the possession of more than 24 grams of any meth precursor drug or combination of meth precursor drug is *prima facie* evidence of intent to violate this section. Missouri statute 195.246 indicates that it is illegal to possess any methamphetamine precursor drug (Ephedrine, Pseudoephedrine, and Phenylpropanolamine) with intent to manufacture either meth or amphetamine. And, again, possession of more than 24 grams of any meth precursor drug is *prima facie* evidence of intent to violate this section. Again, I believe this legislation gets to the heart of the problem, which is regulating precursors.

### **RETAIL SALE REGULATIONS**

4. Missouri statute 195.417 makes it illegal to deliver in any single over-the-counter sale more than three (3) packages of any methamphetamine precursor drug or combination of meth precursor drugs. The statute also indicates that the owner of a store will not be penalized for his employees actions if he can document that a training program was in place to educate employees with information on state and federal laws regarding Ephedrine, Pseudoephedrine and Phenylpropanolamine.

## **DISTRIBUTION TO MINOR**

5. We would propose that distribution by a minor should be a Class B felony. Missouri statute 195.212 reflects a problem where meth cooks used minors to gather ingredients and then paid them with the finished product. The statute indicates that it is not a defense that the cook may not have known a minor's age.

## **PENALTIES FOR ATTEMPT**

6. In Wisconsin we need to amend the stealing of anhydrous ammonia and liquid nitrogen to include also **attempted** stealing of these substances with the same penalty. We also request that it would be a felony to steal any bulk anhydrous ammonia by appropriation of tank truck, tank trailer, rail tank car, bulk storage tank, field tank or field applicator. It is important that this be enacted due to the difficulties in distinguishing between attempting to steal anhydrous and the actual theft.

## **RELEASE OF ANHYDROUS AMMONIA INTO ATMOSPHERE**

7. We would request that it would be a felony to release anhydrous ammonia into the atmosphere. Missouri statute 577.075 deals specifically with this issue in not only the possible lethal effects, but also the significant environmental dangers. *forfeiture*

## **LANDLORD/PROPERTY BUYERS**

8. We would request legislation dealing with landlords and property buyers where meth is involved. Specifically, we would request legislation that would require landlords to report to tenants, in writing, when the property to be leased was or had been used for meth production. We would also request that the seller of a property must report to a purchaser when the real property being sold was or had been used for meth production. The Missouri statutes dealing with this are 441.236 and 442.606.

## **METH HOTLINE**

9. The establishment of a meth toll-free hotline. The purpose would be for citizens to report suspicious activity to law enforcement.

## **TREATMENT OPTIONS**

10. I believe this is very important in that the information we have is that it takes six (6) months to a year to get off meth. The current situation requires either incarceration or nothing. Since I am not an expert on the issues of treatment, I am not qualified to recommend specifics, but I think it is important that treatment be available and that there be other alternatives besides incarceration.

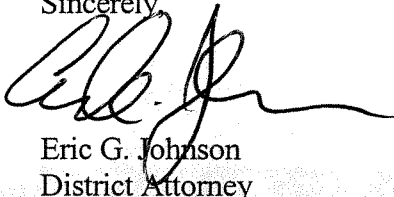
## CHEM PARTNER PROGRAM

11. The establishment of a CHEM partner program. CHEM stands for: Companies Helping Eliminate Meth and would help local media and local law enforcement to educate retailers and the public about the ingredients commonly used to make meth and to set up signs in the stores near precursor products indicating that suspicious behavior would be reported to police by the clerks. We are in the process of doing this program in St. Croix County and are attempting to identify the retailers who sell the precursors. I believe a statewide initiative on this program would be helpful.

Again, I believe that we in St. Croix County should be leaders in initiating legislation and programs on methamphetamine since we have the highest meth caseload in the state. I also understand that some of these recommendations may be politically problematic and would not receive overwhelming support. The ideas that my office is presenting come from a collection of other states that have been overwhelmed by meth and have reacted in a variety of ways. I have attempted to collect their legislation and their variety of initiatives so that we can deal with this problem before it becomes epidemic.

Thank you for your support and cooperation on this issue. I would be happy to be involved in any meetings or discussions you would like to have on these issues.

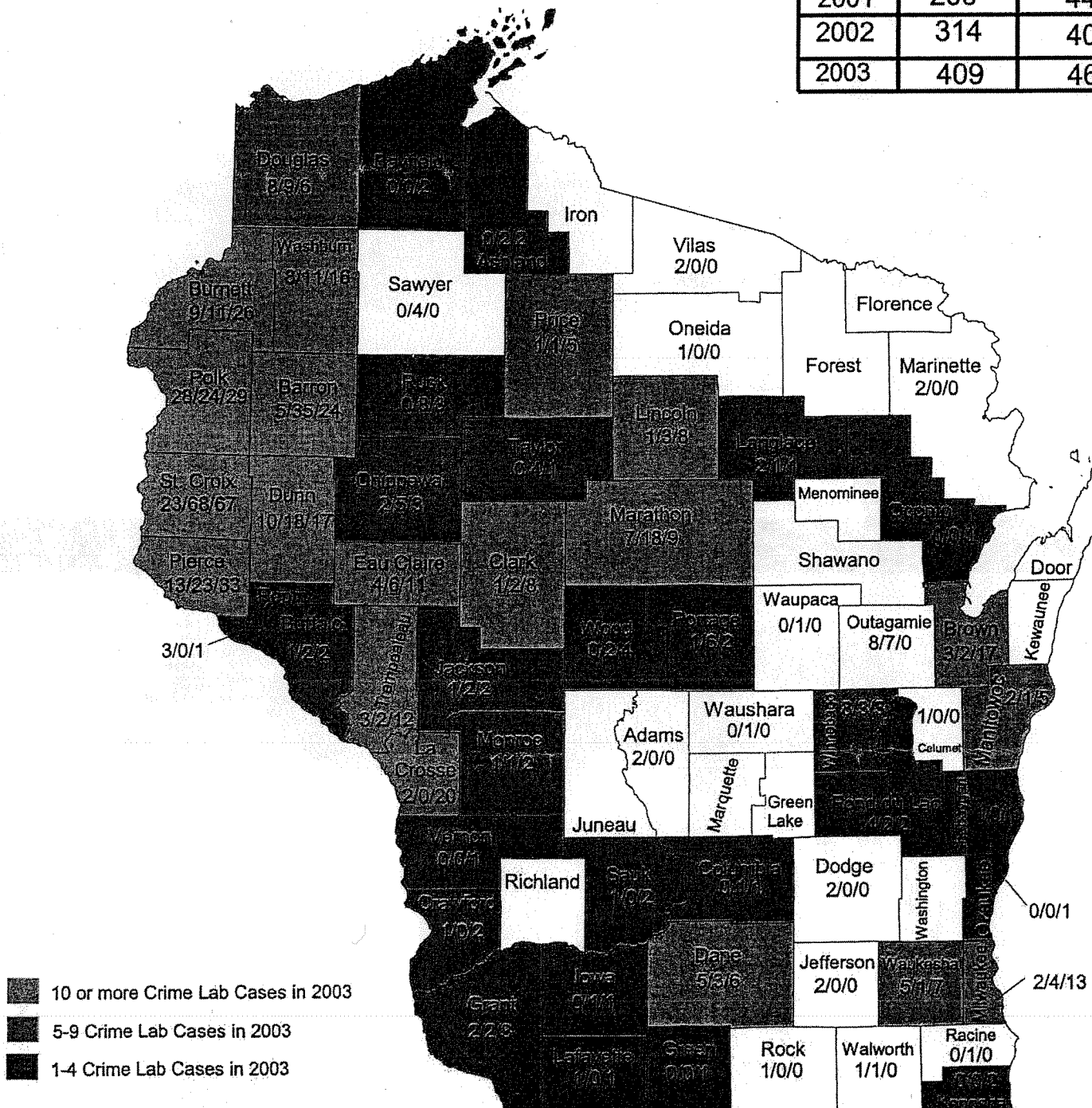
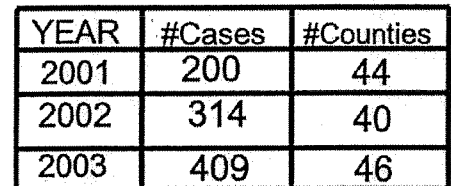
Sincerely,



Eric G. Johnson  
District Attorney

EGJ/jem

cc: Governor James Doyle  
Attorney General Peggy Lautenschlager  
Pierce County DA John O'Boyle  
Polk County DA Karen Smith  
Dunn County DA Jim Peterson  
LaCrosse County DA Scott Home  
Hudson Star Observer  
New Richmond News  
St. Paul Pioneer Press - Kevin Harter  
Eau Claire Leader - Chuck Rupnow  
Keith Edwards, Radio Station  
Jeff Peterson, Radio Station  
Members, Public Protection Committee  
County Board Chair, Buck Malick  
St. Croix County Sheriff Dennis Hillstead  
Pat Kenney, Milwaukee Deputy DA



\* (BASED ON CASES LISTED ON STATE CRIME LAB MONTHLY DRUG SUMMARY REPORTS)



State of Wisconsin  
2005 - 2006 LEGISLATURE

LRB-1099/P1

MGD:.....

WJ

TMJL

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

Soon

~~Soon~~ 1/21,  
which ever  
is sooner

TODAY

DN

of methamphetamine

materials, used to

produce it, the distribution to  
minors, and disclosures  
regarding methamphetamine  
production in ~~other~~ real  
estate transactions.

Gen

1

AN ACT ...; relating to: methamphetamine and materials used to produce it and providing penalties.

2

*Analysis by the Legislative Reference Bureau*

This is a preliminary draft. An analysis will be provided in a later version.

*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

3

SECTION 1. 101.10 (title) of the statutes is amended to read:

4

101.10 (title) **Storage and handling of anhydrous ammonia; theft of**

5

**liquid nitrogen, anhydrous ammonia, and anhydrous ammonia equipment.**

History: 2001 a. 3, 16, 73, 109.

6

SECTION 2. 101.10 (3) (e) of the statutes is amended to read:

7

101.10 (3) (e) Intentionally take, carry away, use, conceal, or retain possession

8

of liquid nitrogen, anhydrous ammonia belonging to another, or anhydrous ammonia

9

equipment belonging to another, without the other's consent and with intent to



1 deprive the owner permanently of possession of the liquid nitrogen, anhydrous  
2 ammonia, or anhydrous ammonia equipment.

History: 2001 a. 3, 16, 73, 109.

3 **SECTION 3.** 101.10 (3) (f) of the statutes is created to read:

4 101.10 (3) (f) Intentionally release or allow the escape of anhydrous ammonia  
5 belonging to another into the atmosphere. This paragraph does not apply if the  
6 owner has authorized the actor to exercise control over the anhydrous ammonia or  
7 has consented to its release.

8 **SECTION 4.** 895.555 (title) of the statutes is amended to read:

9 **895.555 (title) Liability exemption; anhydrous ammonia and liquid**  
10 **nitrogen.**

History: 2001 a. 3.

11 **SECTION 5.** 895.555 (1) of the statutes is amended to read:

12 895.555 (1) LIABILITY EXEMPTION. Except as provided under sub. (2), any person  
13 who owns, maintains, or installs anhydrous ammonia equipment, as defined in s.  
14 101.10 (1) (b), or who uses anhydrous ammonia or liquid nitrogen for any legal  
15 purpose is immune from any civil liability for acts or omissions relating to the  
16 anhydrous ammonia equipment or to anhydrous ammonia or liquid nitrogen that  
17 cause damage or injury to an individual, if that damage or injury occurs during the  
18 individual's violation of s. 101.10 (3) (c), (d), or (e).

History: 2001 a. 3.

19 **SECTION 6.** 939.32 (1) (g) of the statutes is created to read:

20 939.32 (1) (g) Whoever attempts to commit a crime under s. 101.10 (3) (e) is  
21 subject to the penalty for the completed act, as provided in s. 101.10 (4) (b).

22 **SECTION 7.** 961.01 (14f) of the statutes is created to read:

1           961.01 (14f) "Methamphetamine precursor" means ephedrine,  
2           pseudoephedrine, phenylpropanolamine, or any of their salts, isomers and salts of  
3           isomers that are theoretically possible within the specific chemical designation.

4           **SECTION 8.** 961.22 (3) (b) of the statutes is created to read:

5           961.22 (3) (b) Pseudoephedrine hydrochloride.

6           **SECTION 9.** 961.23 (5) of the statutes is renumbered 961.23 (5) (intro.) and  
7           amended to read:

8           961.23 (5) (intro.) That no person may purchase ~~more than 8 ounces of a~~  
9           ~~product containing opium or more than 4 ounces of a product containing any other~~  
10          ~~schedule V substance~~ any of the following within a 48-hour period without the  
11          authorization of a physician, dentist, or veterinarian nor ~~may more than 8 ounces of~~  
12          ~~a product containing opium or more than 4 ounces of a product containing any other~~  
13          ~~schedule V substance be in the possession of any person other than, unless the person~~  
14          is a physician, dentist, veterinarian, or pharmacist at any time, possess any of the  
15          following without the authorization of a physician, dentist or veterinarian.;

16          History: 1971 c. 219; 1973 c. 12 s. 37; 1981 c. 206; 1993 a. 482; 1995 a. 448 s. 228; Stats. 1995 s. 961.23.

16          **SECTION 10.** 961.23 (5) (a) of the statutes is created to read:

17          961.23 (5) (a) More than 8 ounces of a product containing opium.

18          **SECTION 11.** 961.23 (5) (b) of the statutes is created to read:

19          961.23 (5) (b) Any product containing more than 9 grams of methamphetamine  
20          precursors.

21          **SECTION 12.** 961.23 (5) (c) of the statutes is created to read:

22          961.23 (5) (c) More than 4 ounces of a product containing any other schedule  
23          V substance.

24          **SECTION 13.** 961.437 (title) of the statutes is amended to read:

1           **961.437 (title) ~~Possession and disposal of Materials used in and waste~~**  
2           **produced from manufacture of methamphetamine.**

History: 1999 a. 129; 2001 a. 109.

3           **SECTION 14.** 961.437 (1) (title) of the statutes is created to read:

4           961.437 (1) (title) DEFINITIONS.

5           **SECTION 15.** 961.437 (2) of the statutes is renumbered 961.437 (3m) (a).

6           **SECTION 16.** 961.437 (2m) of the statutes is created to read:

7           961.437 (2m) MATERIALS USED IN MANUFACTURE OF METHAMPHETAMINE. (a)

8           Except as authorized by this chapter, any person who possesses a methamphetamine  
9           precursor, red phosphorus, lithium metal, sodium metal, iodine, anhydrous  
10          ammonia, or pressurized ammonia with intent to manufacture methamphetamine  
11          is guilty of a Class H felony. Possession of more than 24 grams of methamphetamine  
12          precursors shall be prima facie evidence of intent to manufacture  
13          methamphetamine.

14          **SECTION 17.** 961.437 (3) of the statutes is renumbered 961.437 (3m) (b), and  
15          961.437 (3m) (b) (intro.) and 2., as renumbered, are amended to read:

16          961.437 (3m) (b) (intro.) ~~Subsection (2) Paragraph (a)~~ does not apply to a person  
17          who possesses or disposes of methamphetamine manufacturing waste under all of  
18          the following circumstances:

19               2. The methamphetamine manufacturing waste had previously been possessed  
20          or disposed of by another person in violation of sub. (2) par. (a).

History: 1999 a. 129; 2001 a. 109.

21          **SECTION 18.** 961.437 (3m) (title) of the statutes is created to read:

22          961.437 (3m) (title) WASTE FROM MANUFACTURE OF METHAMPHETAMINE.

23          **SECTION 19.** 961.437 (4) of the statutes is renumbered 961.437 (3m) (c), and

24          961.437 (3m) (c) (intro.), as renumbered, is amended to read:

1           961.437 (3m) (c) (intro.) A person who violates ~~sub. (2)~~ par. (a) is subject to the  
2 following penalties:

3 History: 1999 a. 129; 2001 a. 109.

3           **SECTION 20.** 961.437 (5) of the statutes is renumbered 961.437 (3m) (d) and  
4 amended to read:

5           961.437 (3m) (d) Each day of a continuing violation of ~~sub. (2)~~ par. (a) 1. or (b) 2.  
6 constitutes a separate offense.

7 History: 1999 a. 129; 2001 a. 109.

7           **SECTION 21.** 961.46 of the statutes is renumbered 961.46 (1) and amended to  
8 read:

9           961.46 (1) If Except as provided in sub. (2), if a person 17 years of age or over  
10 violates s. 961.41 (1) by distributing or delivering a controlled substance or a  
11 controlled substance analog to a person 17 years of age or under who is at least 3  
12 years his or her junior, the applicable maximum term of imprisonment prescribed  
13 under s. 961.41 (1) for the offense may be increased by not more than 5 years.

14 History: 1971 c. 219; 1985 a. 328; 1987 a. 339; 1989 a. 121; 1993 a. 98, 118, 490; 1995 a. 27; 1995 a. 448 ss. 276 to 279; Stats. 1995 s. 961.46; 1999 a. 48, 57; 2001 a. 109.

14           **SECTION 22.** 961.46 (2) of the statutes is created to read:

15           961.46 (2) Notwithstanding s. 961.41 (1) (e), if a person 17 years of age or over  
16 violates s. 961.41 (1) by distributing or delivering methamphetamine or a controlled  
17 substance analog of methamphetamine to a person 17 years of age or under who is  
18 at least 3 years his or her junior, the person is guilty of a Class B felony.

19

(END)

2

2005-2006 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU

LRB  
.....

NS 2/7

LPS:  
Please  
check  
spacing.

SECTION ~~7~~<sup>✓</sup> 704.16 of the statutes is created to read:

**704.16 Disclosure required for leasing of property where methamphetamine production occurred.** If the premises to be leased by a landlord is being used or has been used as a site for methamphetamine production and the landlord has knowledge of this fact, the landlord shall disclose the same in writing to the prospective tenant.

SECTION ~~2~~<sup>9</sup> 709.08 of the statutes is created to read:

**709.08 Disclosure required for transfer of property where methamphetamine production occurred.** In addition to the other requirements of this chapter, if the property being transferred is being used or has been used as a site for methamphetamine production and the owner or transferor has knowledge of this fact, the owner or transferor of the property shall disclose the same in writing to the prospective purchaser or transferee.

**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRB-1099/P1dn

MGD:.....

WJ

Chris:

1. Here are a few examples of other midwestern states' penalties for the possession of precursors with intent to manufacture methamphetamine:

<i>State</i>	<i>Statutory section</i>	<i>Maximum term of imprisonment</i>	<i>Fine</i>
Minnesota	152.021(2a)(b)	3 years	\$5,000 maximum
Iowa	124.401(4)	4 years	\$750-\$7,500
Kansas	65-7006(a)	17 years (presumptive)	\$500,000 maximum

The penalties that this bill provides are closer to Minnesota's and Iowa's than to Kansas's. Under the bill, possession of precursors with intent to manufacture methamphetamine is a Class H felony. (Note that possessing, delivering, or manufacturing methamphetamine-related drug paraphernalia is also a Class H felony under current law.) The maximum total sentence length for a Class H felony is six years, the maximum initial term of confinement is three years, and the maximum fine is \$10,000. Please let me know if that is okay.

- \* 2. The bill lists pseudoephedrine as a ~~Schedule V~~ controlled substance and limits the amount that a person can purchase within a 48-hour time period to nine grams. That would permit a person to purchase no more than three packages of ~~Sudafed~~ or a comparable product that has pseudoephedrine as the sole active ingredient. (~~Most~~ Other states that set a similar threshold ~~seem to set it to~~ allow the purchase of either two or three packages.) At the same time, it would ~~also~~ regulate the sale of products that contain other active ingredients in combination with pseudoephedrine. Is that your intent? (Some states regulate all medications containing methamphetamine precursors, and some regulate only those in which pseudoephedrine is the sole active ingredient.) In addition, Iowa law exempts products containing pseudoephedrine as the product's sole active ingredient if it is in liquid form, if it is intended for use by children, or if <sup>the</sup> Iowa Board of Pharmacy Examiners, with the concurrence of the Iowa Department of Public Safety, determines that the product is formulated to prevent its conversion into methamphetamine. Do you want to include a comparable exemption?

laws that I have reviewed and

the bill

Finally, Oklahoma's nine-gram limitation is based on a 30-day period. The 48-hour period that this bill contains is derived from the restrictions in current law for other Schedule V drugs. Let me know if you want to use a time frame other than the existing one for Schedule V drugs.

3. Oklahoma requires a person to present a photo ID when purchasing pseudoephedrine. Wisconsin law only requires a person purchasing a Schedule V drug to "present to the seller that person's correct name and address." Do you want to include a photo ID requirement for methamphetamine precursors? If so, should it apply to all Schedule V drugs?

4. There are a number of cross-references in other statutes to prohibitions in s. 961.41 (1m) on possessing a controlled substance with intent to manufacture, distribute, or deliver it. For example, under s. 973.017 (8) (a) 2., if a person violates s. 961.41 (1m) with intent to distribute a controlled substance in a prison or jail, the court must consider that fact as an aggravating factor at sentencing. Do you want the bill to treat possession of methamphetamine precursors with intent to distribute the drug in the same way, for the purpose of these cross-references, as s. 961.41 (1m) is treated? (If it would help, I can discuss each of those cross-references with you.)

5. I did not include anything for Item 4 in Eric Johnson's letter. The B-package limit is covered by Item 2, and the immunity provision is made unnecessary by classifying methamphetamine precursors as Schedule V controlled substances. (Under s. 961.23, Schedule V drugs can be sold at retail only by a registered pharmacist.) Note, however, that selling more of a Schedule V controlled substance than is authorized under s. 961.23 is a Class I felony. In Iowa and Missouri, by contrast, selling more than the authorized amount of pseudoephedrine is a misdemeanor. See s. 126.23A(4), Iowa stats.; s. 195.417(5), Mo. stats.

6. The bill adds liquid nitrogen to s. 101.10 (3) (e) so that theft of liquid nitrogen is treated the same way as theft of anhydrous ammonia. Should the prohibition regarding the release of anhydrous ammonia also cover liquid nitrogen? The bill also treats attempted theft of anhydrous ammonia and liquid nitrogen in the same way as the completed offense. But what Mr. Johnson requests in the second sentence of Item 6 is already covered under current law. See s. 101.10 (1) (b) and (3) (e).

7. The word "forfeiture" was handwritten on Mr. Johnson's letter next to Item 7. I ignored that notation for now.

Michael Dsida  
Legislative Attorney  
Phone: (608) 266-9867

30 Item 50 in Eric Johnson's letter refers to the use of minors being used to <sup>help</sup> produce methamphetamine, but the statute ~~to which~~ that he mentions relates to all drugs. Since 50 961.046 ~~is~~ already provides higher penalties for distributing drugs to minors, I assumed that you wanted the Class B penalties to apply only in cases involving methamphetamine.

**DRAFTER'S NOTE**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRB-1099/P1dn  
MGD:wlj:pg

January 18, 2005

Chris:

1. Here are a few examples of other midwestern states' penalties for the possession of precursors with intent to manufacture methamphetamine:

<i>State</i>	<i>Statutory section</i>	<i>Maximum term of imprisonment</i>	<i>Fine</i>
Minnesota	152.021(2a)(b)	3 years	\$5,000 maximum
Iowa	124.401(4)	4 years	\$750-\$7,500
Kansas	65-7006(a)	17 years (presumptive)	\$500,000 maximum

The penalties that this bill provides are closer to Minnesota's and Iowa's than to Kansas's. Under the bill, possession of precursors with intent to manufacture methamphetamine is a Class H felony. (Note that possessing, delivering, or manufacturing methamphetamine-related drug paraphernalia is also a Class H felony under current law.) The maximum total sentence length for a Class H felony is six years, the maximum initial term of confinement is three years, and the maximum fine is \$10,000. Please let me know if that is okay.

2. The bill lists pseudoephedrine as a schedule V controlled substance and limits the amount that a person can purchase within a 48-hour time period to nine grams. That would permit a person to purchase no more than three packages of a product that has pseudoephedrine as the sole active ingredient. (Other states' laws that I have reviewed and that set a similar threshold allow the purchase of either two or three packages.) At the same time, the bill would regulate the sale of products that contain other active ingredients in combination with pseudoephedrine. Is that your intent? (Some states regulate all medications containing methamphetamine precursors, and some regulate only those in which pseudoephedrine is the sole active ingredient.) In addition, Iowa law exempts products containing pseudoephedrine as the product's sole active ingredient if it is in liquid form, if it is intended for use by children, or if the Iowa Board of Pharmacy Examiners, with the concurrence of the Iowa Department of Public Safety, determines that the product is formulated to prevent its conversion into methamphetamine. Do you want to include a comparable exemption? Finally, Oklahoma's nine-gram limitation is based on a 30-day period. The 48-hour period that this bill contains is derived from the restrictions in current law for other schedule



V drugs. Let me know if you want to use a time frame other than the existing one for schedule V drugs.

3. Item 5. in Eric Johnson's letter refers to minors being used to help produce methamphetamine, but the statute that he mentions relates to all drugs. Since s. 961.46 already provides higher penalties for distributing drugs to minors, I assumed that you wanted the Class B penalties to apply only in cases involving methamphetamine.

4. Oklahoma requires a person to present a photo ID when purchasing pseudoephedrine. Wisconsin law requires a person purchasing a schedule V drug only to "present to the seller that person's correct name and address." Do you want to include a photo ID requirement for methamphetamine precursors? If so, should it apply to all schedule V drugs?

5. There are a number of cross-references in other Wisconsin statutes to prohibitions in s. 961.41 (1m) on possessing a controlled substance with intent to manufacture, distribute, or deliver it. For example, under s. 973.017 (8) (a) 2., if a person violates s. 961.41 (1m) with intent to distribute a controlled substance in a prison or jail, the court must consider that fact as an aggravating factor at sentencing. Do you want the bill to treat possession of methamphetamine precursors with intent to distribute the drug in the same way, for the purpose of these cross-references, as s. 961.41 (1m) is treated? (If it would help, I can discuss each of those cross-references with you.)

6. I did not include anything for item 4. in Mr. Johnson's letter. The three-package limit is covered by item 2., and the immunity provision is made unnecessary by classifying methamphetamine precursors as schedule V controlled substances. (Under s. 961.23, schedule V drugs can be sold at retail only by a registered pharmacist.) Note, however, that selling more of a schedule V controlled substance than is authorized under s. 961.23 is a Class I felony. In Iowa and Missouri, by contrast, selling more than the authorized amount of pseudoephedrine is a misdemeanor. See s. 126.23A(4), Iowa stats.; s. 195.417(5), Missouri stats.

7. The bill adds liquid nitrogen to s. 101.10 (3) (e) so that theft of liquid nitrogen is treated the same way as theft of anhydrous ammonia. Should the prohibition regarding the release of anhydrous ammonia also cover liquid nitrogen? The bill also treats attempted theft of anhydrous ammonia and liquid nitrogen in the same way as the completed offense. But what Mr. Johnson requests in the second sentence of item 6. is already covered under current law. See s. 101.10 (1) (b) and (3) (e).

8. The word "forfeiture" was handwritten on Mr. Johnson's letter next to item 7. I ignored that notation for now.

Michael Dsida  
Legislative Attorney  
Phone: (608) 266-9867

## Dsida, Michael

---

**From:** Dsida, Michael  
**Sent:** Saturday, January 29, 2005 2:54 PM  
**To:** Schneider, Christian  
**Subject:** RE: Meth issues for Harsdorf draft LRB 1099

*I know you  
Chris*

1. I can certainly add a separate penalty for importing meth precursors if you want (although, depending on how the prohibition is structured, it might be an unconstitutional restriction on interstate commerce), but I'm not sure why you would need one. I assume that the importers that you would want to target with such a penalty are people who are importing in bulk, and their conduct may already be covered by s. 961.437 (2m). Would it help if that subsection prohibited the possession of meth precursors, etc. with intent to *facilitate the manufacture* of methamphetamine? It might be easier to target the importers that way.

2. You probably can ignore my question about liquid nitrogen (item 7 in the drafter's note). I assume that the release of liquid nitrogen just produces harmless nitrogen gas. I should have realized when I was first thinking about the question.

-----Original Message-----

**From:** Schneider, Christian  
**Sent:** Friday, January 28, 2005 1:34 PM  
**To:** Dsida, Michael  
**Subject:** FW: Meth issues for Harsdorf draft LRB 1099

Per my last e-mail: The Washington standard for whether a property is "cleaned up" is 5 micrograms of meth residue per square foot. See attached landlord flyer.

<http://www.doh.wa.gov/ehp/ts/CDL/Landlord-MethQuestions.doc>

In Oregon, it is .5 micrograms per square foot - so I may need to discuss an appropriate level for Wisconsin rather than just lifting Washington's.

-----Original Message-----

**From:** Schneider, Christian  
**Sent:** Friday, January 28, 2005 1:24 PM  
**To:** Dsida, Michael  
**Subject:** Meth issues for Harsdorf draft LRB 1099

*keep Sched V*

Mike,

At some point we will need to talk on the phone, but I thought I would give you some of my thoughts on our Meth draft. We have talked to other offices and have received some feedback.

First, I think Sheila agrees that we don't need to make pseudoephedrine a Schedule V. We would still like gas stations and groceries to be able to sell it, which going Schedule V would prevent. Instead, I think we may move toward applying a lot of the principles of a Schedule V (like being behind the counter and signing for it), in addition to purchasing amount limits and photo ID requirement.

Secondly, we need to work on the issue of landlord notification. I think it may be too harsh to require that landlords disclose the presence of a meth lab without giving them the opportunity to first clean it up using a licensed contractor. In looking at other states, I am interested in what Washington has done (and I'm just going off the statute), with a framework of licensing contaminant cleanup crews, having health officials being able to shut down a property until it is proven that it has been cleaned up by a licensed crew, and a hearing process for landlords to be able to prove the property has been rehabilitated. This cleanup would be paid for by the property owner. Simply requiring them to disclose renders a property useless. Attached is the Washington statute, as well as a link to their Department of Health meth webpage.

<http://www.leg.wa.gov/rcw/index.cfm?fuseaction=chapter&chapter=64.44&RequestTimeout=500>

<http://www.doh.wa.gov/ehp/ts/CDL.HTM>

In going down your list of questions in the drafter's note, let me take them one by one:

1. Class H felony is fine.
2. Addressed above - we'd like to find some middle ground between Schedule V and current law that will be acceptable to retailers. We would like to exempt any product that has pseudoephedrine as one ingredient, but not the main ingredient (gel caps, liquid form). If it can't be used to make meth, we want to leave it alone. If we need to leave it up to the pharmacy board to determine what can or can't be used, then I think that would be fine. We want to get at the little red pills. Additionally, we would like to make the nine gram limitation based on a 30 day period, rather than a 48 hour one.
3. Yes, just meth cases.
4. Discussed above - a photo ID just for pseudoephedrine.
5. I think we do want to treat possession with intent to distribute in the same way as other aggravating factors for other drugs.
6. We are still having discussions as to the penalty retailers should pay for selling more than the authorized amount, plus failure to have someone show photo ID or sign the register. I will let you know what we come up with. *class I oh*
7. I honestly have no idea whether releasing liquid nitrogen into the air is harmful. I'll have to get back to you on that.

I don't think you need to begin making changes just yet, this is just what we are thinking after discussions with other offices that are interested in the bill. It has also been suggested that we include a penalty for transporting meth precursors across the border, so suggestions on that would be helpful.

Thanks,

Chris

Plc from Chris

No disclosure to landlord / seller §§ 4+5

Add Petter's bill w/ Amst

Keep Sched. V stuff.

## 2003 ASSEMBLY BILL 212

add  
(as amended)Also  
add or (A)  
to 895.555

March 25, 2003 - Introduced by Representatives PETTIS, SUDER, LEMAHIEU, KRAWCZYK, BIES, HINES and ALBERS, cosponsored by Senator ROESSLER. Referred to Committee on Criminal Justice.

in the presence of  
younger minors

- 1 **AN ACT to renumber and amend 961.573 (3); and to create 961.573 (3) (b) 2.**  
 2 of the statutes, ~~relating to: use of, and possession with intent to use,~~ certain  
 3 of drug paraphernalia and providing a penalty.

methamphetamine related

**Analysis by the Legislative Reference Bureau**

Current law prohibits the use of, and the possession with intent to use, drug paraphernalia. A person who violates this prohibition may be imprisoned for not more than 30 days or fined not more than \$500 or both. If the paraphernalia is for making or storing methamphetamine, the person may be imprisoned for not more than six years or fined not more than \$10,000 or both.

This bill increases the penalty for a person using, or possessing with intent to use, drug paraphernalia related to methamphetamine, if the person is 18 years of age or older and possesses or uses the drug paraphernalia in the presence of a child who is 16 years of age or younger. In such a case, the person may be imprisoned for not more than ten years or fined not more than \$25,000 or both.

Because this bill creates a new crime or revises a penalty for an existing crime, the Joint Review Committee on Criminal Penalties may be requested to prepare a report concerning the proposed penalty and the costs or savings that are likely to result if the bill is enacted.

INS  
1/8

14

**ASSEMBLY BILL 212**

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

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*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

1        **SECTION ~~1~~** 961.573 (3) of the statutes is renumbered 961.573 (3) (a) and  
2 amended to read:

3        961.573 (3) (a) No person may use, or possess with the primary intent to use,  
4 drug paraphernalia to manufacture, compound, convert, produce, process, prepare,  
5 test, analyze, pack, repack, or store methamphetamine or a controlled substance  
6 analog of methamphetamine in violation of this chapter. ~~Any~~

7        (b) 1. Except as provided in subd. 2., any person who violates this subsection  
8 par. (a) is guilty of a Class H felony.

9        **SECTION ~~2~~** 961.573 (3) (b) 2. of the statutes is created to read:

10        961.573 (3) (b) 2. Any person who is 18 years of age or older and who violates  
11 par. (a) while in the presence of a child who is 16 years of age or younger is guilty of  
12 a Class G felony.

13        (END)

14

INS  
6/10B

## Dsida, Michael

---

**From:** Dsida, Michael  
**Sent:** Thursday, February 10, 2005 9:41 AM  
**To:** Schneider, Christian  
**Subject:** RE: Schedule V limitations

-----Original Message-----

**From:** Schneider, Christian  
**Sent:** Thursday, February 10, 2005 9:30 AM  
**To:** Dsida, Michael  
**Subject:** RE: Schedule V limitations

1. From my understanding of the bill, the limitation on possessing was 24 grams of any meth precursor (Section 18). Am I wrong on this? I would think we would have to make the possession standard higher than the 9 gram purchase limit.

You're right. I drafted those two parts of the bill without thinking about how they interacted with each other. I'll change the Schedule V provisions so that they only cover acquiring pseudoephedrine HCl, not possessing it.

2. I think we should exempt liquid and gel caps, and leave it up to the pharmacy examining board for everything else that includes pseudoephedrine as one of many ingredients. For instance, Pfizer is coming out with a product that they claim includes pseudoephedrine but can't be made into meth. Rather than take their word for it, I think it would be reasonable to run it by the people that know best.

Should the Board's authority also cover a product whose sole active ingredient is pseudoephedrine HCl? (I'm thinking that maybe Pfizer's product (or someone else's down the road) may have pseudoephedrine HCl and some non-medicinal chemical to prevent using it for meth, but nothing else.)

-----Original Message-----

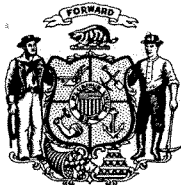
**From:** Dsida, Michael  
**Sent:** Thursday, February 10, 2005 9:11 AM  
**To:** Schneider, Christian  
**Subject:** Schedule V limitations

1. Just to be sure -- do you still want a prohibition on *possessing* more than 9 grams of meth precursors? (That would be in addition to the prohibition on purchasing more than 9 grams in a 30-day period.) With other Schedule V substances, there are prohibitions on both acquisition and possession.

2. Given your decision to stick with the Schedule V approach, I wasn't sure what other parts of your answer to Item 2 in the drafter's note you wanted to incorporate. Should the Schedule V restrictions not apply if: 1) there are other active ingredients (the approach taken under current law with respect to ephedrine; see s. 961.20(2m)(ak)); 2) if it is in gel caps or liquid form; 3) if it is in a product that the Board determines cannot be used to make meth; or 4) some combination of those? Or should there be no exceptions?

3. I made a mistake in Section 13 of the bill. Given the instructions in Item 2 of Mr. Johnson's memo, that section should have referred to pseudoephedrine HCl, not "methamphetamine precursors."

Mike Dsida  
Legislative Reference Bureau  
608/266-9867  
michael.dsida@legis.state.wi.us



State of Wisconsin  
2005 - 2006 LEGISLATURE

LRB-1099/P1  
MGD&MJD:wlj:pg

P2

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

FRI  
2/11  
HPM  
11:00V

pseudoephedrine  
hydrochloride

Lps:  
There  
are  
inserts  
to inserts.

Regen

1 AN ACT *to renumber* 961.437 (2); *to renumber and amend* 961.23 (5), 961.437  
2 (3), 961.437 (4), 961.437 (5) and 961.46; *to amend* 101.10 (title), 101.10 (3) (e),  
3 895.555 (title), 895.555 (1) and 961.437 (title); and *to create* 101.10 (3) (f),  
4 704.16, 709.09, 939.32 (1) (g), 961.01 (14f), 961.22 (3) (b), 961.23 (5) (a), 961.23  
5 (5) (b), 961.23 (5) (c), 961.437 (1) (title), 961.437 (2m), 961.437 (3m) (title) and  
6 961.46 (2) of the statutes; **relating to:** methamphetamine and materials used  
7 to produce ~~it~~, the distribution of methamphetamine to minors, disclosures  
8 regarding methamphetamine production in real estate transactions, and  
9 providing penalties.

**Analysis by the Legislative Reference Bureau**

This is a preliminary draft. An analysis will be provided in a later version.

**The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:**

10 SECTION 1. 101.10 (title) of the statutes is amended to read:



1           **101.10 (title) Storage and handling of anhydrous ammonia; theft of**  
2           **liquid nitrogen, anhydrous ammonia, and anhydrous ammonia equipment.**

3           **SECTION 2.** 101.10 (3) (e) of the statutes is amended to read:

4           101.10 (3) (e) Intentionally take, carry away, use, conceal, or retain possession  
5           of liquid nitrogen, anhydrous ammonia ~~belonging to another~~, or anhydrous ammonia  
6           equipment belonging to another, without the other's consent and with intent to  
7           deprive the owner permanently of possession of the liquid nitrogen, anhydrous  
8           ammonia, or anhydrous ammonia equipment.

9           **SECTION 3.** 101.10 (3) (f) of the statutes is created to read:

10           101.10 (3) (f) Intentionally release or allow the escape of anhydrous ammonia  
11           belonging to another into the atmosphere. This paragraph does not apply if the  
12           owner has authorized the actor to exercise control over the anhydrous ammonia or  
13           has consented to its release.

14           **SECTION 4.** 704.16 of the statutes is created to read:

15           **704.16 Disclosure required for leasing of property where**  
16           **methamphetamine production occurred.** If the premises to be leased by a  
17           landlord is being used or has been used as a site for methamphetamine production  
18           and the landlord has knowledge of this fact, the landlord shall disclose the same in  
19           writing to the prospective tenant.

20           **SECTION 5.** 709.09 of the statutes is created to read:

21           **709.09 Disclosure required for transfer of property where**  
22           **methamphetamine production occurred.** In addition to the other requirements  
23           of this chapter, if the property being transferred is being used or has been used as  
24           a site for methamphetamine production and the owner or transferor has knowledge

1 of this fact, the owner or transferor of the property shall disclose the same in writing  
2 to the prospective purchaser or transferee.

3 **SECTION 6.** 895.555 (title) of the statutes is amended to read:

4 **895.555 (title) Liability exemption; anhydrous ammonia and liquid**  
5 **nitrogen.**

6 **SECTION 7.** 895.555 (1) of the statutes is amended to read:

7 895.555 (1) LIABILITY EXEMPTION. Except as provided under sub. (2), any person  
8 who owns, maintains, or installs anhydrous ammonia equipment, as defined in s.  
9 101.10 (1) (b), or who uses anhydrous ammonia or liquid nitrogen for any legal  
10 purpose is immune from any civil liability for acts or omissions relating to the  
11 anhydrous ammonia equipment or to anhydrous ammonia or liquid nitrogen that  
12 cause damage or injury to an individual, if that damage or injury occurs during the  
13 individual's violation of s. 101.10 (3) (c), (d), ~~or (e)~~, or (f).

14 **SECTION 8.** 939.32 (1) (g) of the statutes is created to read:

15 939.32 (1) (g) Whoever attempts to commit a crime under s. 101.10 (3) (e) is  
16 subject to the penalty for the completed act, as provided in s. 101.10 (4) (b).

17 **SECTION 9.** 961.01 (14f) of the statutes is created to read:

18 961.01 (14f) "Methamphetamine precursor" means ephedrine,  
19 pseudoephedrine, <sup>hydrochloride</sup> phenylpropanolamine, or any of their salts, isomers, and salts of  
20 isomers that are theoretically possible within the specific chemical designation.

21 **SECTION 10.** 961.22 (3) (b) of the statutes is created to read:

22 961.22 (3) (b) Pseudoephedrine hydrochloride.

23 **SECTION 11.** 961.23 (5) of the statutes is renumbered 961.23 (5) (intro.) and  
24 amended to read:

INS 3/22

1        961.23 (5) (intro.) That no person may purchase ~~more than 8 ounces of a~~  
2 ~~product containing opium or more than 4 ounces of a product containing any other~~  
3 ~~schedule V substance~~ any of the following ~~within a 48-hour period~~ without the  
4 authorization of a physician, dentist, or veterinarian nor ~~may more than 8 ounces of~~  
5 ~~a product containing opium or more than 4 ounces of a product containing any other~~  
6 ~~schedule V substance be in the possession of any person other than, unless the person~~  
7 ~~is a physician, dentist, veterinarian, or pharmacist at any time, possess any of the~~  
8 ~~following~~ without the authorization of a physician, dentist, or veterinarian.;

9        SECTION 12. 961.23 (5) (a) of the statutes is created to read:

10       961.23 (5) (a) More than 8 ounces of a product containing opium.

11       SECTION 13. 961.23 (5) (b) of the statutes is created to read:

12       961.23 (5) (b) Any product containing more than 9 grams of methamphetamine  
13 precursors.

14       SECTION 14. 961.23 (5) (c) of the statutes is created to read:

15       961.23 (5) (c) More than 4 ounces of a product containing any other schedule  
16 V substance.

17       SECTION 15. 961.437 (title) of the statutes is amended to read:

18       **961.437 (title) Possession and disposal of Materials used in and waste**  
19 **produced from manufacture of methamphetamine.**

20       SECTION 16. 961.437 (1) (title) of the statutes is created to read:

21       961.437 (1) (title) DEFINITIONS.

22       SECTION 17. 961.437 (2) of the statutes is renumbered 961.437 (3m) (a).

23       SECTION 18. 961.437 (2m) of the statutes is created to read:

24       961.437 (2m) MATERIALS USED IN MANUFACTURE OF METHAMPHETAMINE. Except  
25 as authorized by this chapter, any person who possesses a methamphetamine

precursor, red phosphorus, lithium metal, sodium metal, iodine, anhydrous ammonia, or pressurized ammonia with intent to manufacture methamphetamine is guilty of a Class H felony. Possession of more than 24 grams of methamphetamine precursors shall be prima facie evidence of intent to manufacture methamphetamine.

**SECTION 19.** 961.437 (3) of the statutes is renumbered 961.437 (3m) (b), and 961.437 (3m) (b) (intro.) and 2., as renumbered, are amended to read:

961.437 (3m) (b) (intro.) ~~Subsection (2) Paragraph (a)~~ does not apply to a person who possesses or disposes of methamphetamine manufacturing waste under all of the following circumstances:

2. The methamphetamine manufacturing waste had previously been possessed or disposed of by another person in violation of ~~sub. (2) par. (a)~~.

**SECTION 20.** 961.437 (3m) (title) of the statutes is created to read:

961.437 (3m) (title) WASTE FROM MANUFACTURE OF METHAMPHETAMINE.

**SECTION 21.** 961.437 (4) of the statutes is renumbered 961.437 (3m) (c), and 961.437 (3m) (c) (intro.), as renumbered, is amended to read:

961.437 (3m) (c) (intro.) A person who violates ~~sub. (2) par. (a)~~ is subject to the following penalties:

**SECTION 22.** 961.437 (5) of the statutes is renumbered 961.437 (3m) (d) and amended to read:

961.437 (3m) (d) Each day of a continuing violation of ~~sub. (2) par. (a) 1. or (b) 2.~~ constitutes a separate offense.

**SECTION 23.** 961.46 of the statutes is renumbered 961.46 (1) and amended to read:

1        961.46 (1) ~~If~~ Except as provided in sub. (2), if a person violates s. 961.41 (1) by  
2        distributing or delivering a controlled substance or a controlled substance analog to  
3        a person 17 years of age or under who is at least 3 years his or her junior, the  
4        applicable maximum term of imprisonment prescribed under s. 961.41 (1) for the  
5        offense may be increased by not more than 5 years.

6        **SECTION 24.** 961.46 (2) of the statutes is created to read:

7        961.46 (2) Notwithstanding s. 961.41 (1) (e), if a person violates s. 961.41 (1)  
8        by distributing or delivering methamphetamine or a controlled substance analog of  
9        methamphetamine to a person 17 years of age or under who is at least 2 years his  
10       or her junior, the person is guilty of a Class B felony.

11       (END)

INS 6/10 A, ~~B~~ & C

**2005-2006 DRAFTING INSERT**  
**FROM THE**  
**LEGISLATIVE REFERENCE BUREAU**

LRB-1099/P2ins  
MGD:.....

**INSERT 3/2**

**SECTION 4.** 111.335 (1) (cs) 5. of the statutes is created to read:

111.335 (1) (cs) 5. Possessing any of the materials listed in s. 961.437 (2m) with intent to manufacture methamphetamine under that subsection or under a federal law or a law of another state that is substantially similar to s. 961.437 (2m).

**SECTION 2.** 125.12 (2) (ag) 5m. of the statutes is created to read:

125.12 (2) (ag) 5m. The person has been convicted of possessing any of the materials listed in s. 961.437 (2m) with intent to manufacture methamphetamine under that subsection or under a federal law or a law of another state that is substantially similar to s. 961.437 (2m).

**SECTION 3.** 125.12 (2) (ag) 6m. of the statutes is created to read:

~~125.12 (2) (ag) 6m. The person has been convicted of possessing~~

125.12 (2) (ag) 6m. The person knowingly allows another person, who is on the premises for which the license under this chapter is issued, to possess any of the materials listed in s. 961.437 (2m) with the intent to manufacture methamphetamine.

**SECTION 4.** 125.12 (4) (ag) 7m. of the statutes is created to read:

125.12 (4) (ag) 7m. That the licensee has been convicted of possessing any of the materials listed in s. 961.437 (2m) with intent to manufacture methamphetamine under that subsection or under a federal law or a law of another state that is substantially similar to s. 961.437 (2m).

~~**SECTION 5.** 125.12 (4) (ag) 8. of the statutes is amended to read:~~

1 125.12 (4) (ag) 8m. That the licensee knowingly allows another person, who is  
2 on the premises for which the license under this chapter is issued, to possess any of  
3 the materials listed in s. 961.437 (2m) with the intent to manufacture  
4 methamphetamine.

5 **SECTION 6.** 125.12 (4) (ag) 8m. of the statutes is created to read:

6 125.12 (4) (ag) 7m. That the licensee has been convicted of possessing any of  
7 the materials listed in s. 961.437 (2m) with intent to manufacture  
8 methamphetamine under that subsection or under a federal law or a law of another  
9 state that is substantially similar to s. 961.437 (2m).

10 **INSERT 3/13**

11 **SECTION 7.** 938.34 (14s) (am) (intro.) of the statutes is amended to read:

12 938.34 (14s) (am) (intro.) In addition to any other dispositions imposed under  
13 this section, if the juvenile is found to have violated s. 961.41 (1) or (1m) or 961.437  
14 (2m), the court shall order one of the following penalties:

History: 1995 a. 77, 352, 440, 448; 1997 a. 27, 35, 36, 84, 130, 164, 183, 205; 1999 a. 9, 32, 57, 89, 185; 2001 a. 16, 59, 69, 109; 2003 a. 33, 50, 200, 321.

15 **INSERT 3/16**

16 **SECTION 8.** 939.62 (2m) (a) 2m. b. of the statutes is amended to read:

17 939.62 (2m) (a) 2m. b. Any felony under s. 940.09 (1), 1999 stats., s. 943.23 (1m)  
18 or (1r), 1999 stats., s. 948.35 (1) (b) or (c), 1999 stats., or s. 948.36, 1999 stats., or s.  
19 940.01, 940.02, 940.03, 940.05, 940.09 (1c), 940.16, 940.19 (5), 940.195 (5), 940.21,  
20 940.225 (1) or (2), 940.305, 940.31, 941.327 (2) (b) 4., 943.02, 943.10 (2), 943.23 (1g),  
21 943.32 (2), 946.43 (1m), 948.02 (1) or (2), 948.025, 948.03 (2) (a) or (c), 948.05, 948.06,  
22 948.07, 948.075, 948.08, or 948.30 (2), or 961.437 (2m).

History: 1977 c. 449; 1989 a. 85; 1993 a. 289, 483, 486; 1995 a. 77, 448; 1997 a. 219, 283, 295, 326; 1999 a. 32, 85, 188; 2001 a. 109.

23 **SECTION 9.** 948.015 (6) of the statutes is amended to read:

BONUS  
2/15

1           948.015 (6) Sections ~~961.01 (6) and (9)~~ and Section 961.49, relating to  
2     ~~delivering and distributing offenses involving an intent to deliver or distribute~~  
3     ~~controlled substances or controlled substance analogs to children on or near certain~~  
4     places.

History: 1987 a. 332; 1989 a. 31; 1993 a. 27; 1995 a. 448.

5           **INSERT 3/22**

6           This paragraph does not apply under any of the following circumstances:

7           1. The pseudoephedrine hydrochloride is in a product that contains  
8     therapeutically significant quantities of another active medicinal ingredient.

9           2. The pseudoephedrine hydrochloride is in a liquid or a soft gelatin capsule.

10          3. The controlled substances board has determined, by rule, that the  
11     pseudoephedrine hydrochloride cannot be used readily in the manufacture of  
12     methamphetamine.

13          ~~SECTION 10.~~ 961.23 (4) of the statutes is amended to read:

14          961.23 (4) That any person purchasing such a substance at the time of  
15     purchase present to the seller that person's correct name <sup>↓</sup> and address <sup>2</sup> and, if the  
16     person is purchasing a product to which s. 961.22 (3) (b) applies, an identification  
17     card containing the person's photograph. The seller shall record the name and  
18     address and the name and quantity of the product sold. The purchaser and the seller  
19     shall sign the record of this transaction. The giving of a false name or false address  
20     by the purchaser shall be prima facie evidence of a violation of s. 961.43 (1) (a).

History: 1971 c. 219; 1973 c. 12 s. 37; 1981 c. 206; 1993 a. 482; 1995 a. 448 s. 228; Stats. 1995 s. 961.23.

21          ~~SECTION 11.~~ 961.23 (5) of the statutes is amended to read:

22          961.23 (5) That no person may purchase more than 8 ounces of a product  
23     containing opium or more than 4 ounces of a product containing any other schedule



1 V substance other than pseudoephedrine hydrochloride within a 48-hour period  
2 without the authorization of a physician, dentist, or veterinarian ~~or~~.

3 (6) That no person other than a physician, dentist, veterinarian, or pharmacist  
4 may possess more than 8 ounces of a product containing opium or more than 4 ounces  
5 of a product containing any other schedule V substance ~~be in the possession of any~~  
6 ~~person other than a physician, dentist, veterinarian or pharmacist~~ other than  
7 pseudoephedrine hydrochloride at any time without the authorization of a physician,  
8 dentist, or veterinarian.

History: 1971 c. 219; 1973 c. 12 s. 37; 1981 c. 206; 1993 a. 482; 1995 a. 448 s. 228; Stats. 1995 s. 961.23.

9 ~~SECTION 12.~~ 961.23 (7) of the statutes is created to read:

10 961.23 (7) That no person other than a physician, dentist, veterinarian, or  
11 pharmacist may purchase more than 9 grams of a product to which s. 961.22 (3) (b)  
12 applies within a 30-day period without the authorization of a physician, dentist, or  
13 veterinarian.

14 ~~SECTION 13.~~ 961.41 (1r) of the statutes is amended to read:

15 961.41 (1r) DETERMINING WEIGHT OF SUBSTANCE. In determining amounts under  
16 s. 961.49 (2) (b), 1999 stats., and subs. (1) and (1m), and s. 961.437 (2m), an amount  
17 includes the weight of cocaine, cocaine base, heroin, phencyclidine, lysergic acid  
18 diethylamide, psilocin, psilocybin, amphetamine, methamphetamine,  
19 methamphetamine precursors, methcathinone, or tetrahydrocannabinols or any  
20 controlled substance analog of any of these substances together with any compound,  
21 mixture, diluent, plant material or other substance mixed or combined with the  
22 controlled substance ~~or~~, controlled substance analog, or methamphetamine  
23 precursor. In addition, in determining amounts under subs. (1) (h) and (1m) (h), the

any of the ~~substances~~ materials listed in  
that subsection with intent to manufacture methamphetamine  
and

1 amount of tetrahydrocannabinols means anything included under s. 961.14 (4) (t)  
2 and includes the weight of any marijuana.

**History:** 1971 c. 219, 307; 1973 c. 12; 1981 c. 90, 314; 1985 a. 328; 1987 a. 339, 403; 1989 a. 31, 56, 121; 1991 a. 39; 1993 a. 98, 118, 437, 482; 1995 a. 201; 1995 a. 448 ss. 243 to 266, 487 to 490; Stats. 1995 s. 961.41; 1997 a. 220, 283; 1999 a. 21, 32, 48, 57; 2001 a. 16, 109; 2003 a. 33, 49, 139, 320, 325, 327.

3 **INSERT 6/10A**

4 **SECTION 14.** 961.49 (title) of the statutes is amended to read:

5 **961.49 (title) Distribution of or possession with Offenses involving**  
6 **intent to deliver or distribute a controlled substance on or near certain**  
7 **places.**

**History:** 1985 a. 328; 1987 a. 332, 339, 403; 1989 a. 31, 107, 121; 1991 a. 39; 1993 a. 87, 98, 118, 281, 490, 491; 1995 a. 448 s. 289, 491; Stats. 1995 s. 961.49; 1997 a. 283, 327; 1999 a. 32, 48, 57; 2001 a. 109.

8 **SECTION 15.** 961.49 of the statutes is renumbered 961.49 (1).

9 **SECTION 16.** 961.49 (2m) of the statutes is created to read:

961.437(2m)

10 961.49 (2m) If any person violates s. ~~961.41 (1) (cm), (d), (e), (f), (g) or (h) by~~  
11 ~~delivering or distributing, or violates s. 961.41 (1m) (cm), (d), (e), (f), (g) or (h) by~~  
12 ~~possessing with intent to deliver or distribute, cocaine, cocaine base, heroin,~~  
13 ~~phencyclidine, lysergic acid diethylamide, psilocin, psilocybin, amphetamine,~~  
14 ~~methamphetamine, methcathinone or any form of tetrahydrocannabinols or a~~  
15 ~~controlled substance analog of any of these substances and the delivery, distribution~~  
16 ~~or possession takes place under any of the following circumstances, the maximum~~  
17 ~~term of imprisonment prescribed by law for that crime may be increased by 5 years:~~

**History:** 1985 a. 328; 1987 a. 332, 339, 403; 1989 a. 31, 107, 121; 1991 a. 39; 1993 a. 87, 98, 118, 281, 490, 491; 1995 a. 448 s. 289, 491; Stats. 1995 s. 961.49; 1997 a. 283, 327; 1999 a. 32, 48, 57; 2001 a. 109.

18 **INSERT 6/10C**

19 **SECTION 17.** 973.01 (2) (c) 2. a. of the statutes is amended to read:

20 973.01 (2) (c) 2. a. Sections 939.621, 939.632, 939.645, 961.46 (1), and 961.49.

**History:** 1997 a. 283; 2001 a. 109; 2003 a. 33.

21 **SECTION 18.** 973.017 (8) (a) 3. of the statutes is created to read:

22 973.017 (8) (a) 3. When making a sentencing decision concerning a person  
23 convicted of violating s. 961.437 (2m), the court shall consider as an aggravating

listed under subg (1m) (a), (b), (c), or (d)

1 factor the fact that the violation involved the possession of any of the substances  
2 listed in that subsection with intent to deliver or distribute methamphetamine or  
3 controlled substance analog of methamphetamine to a prisoner within the precincts  
4 of any prison, jail, or house of correction.

5 **SECTION 19.** 973.017 (8) (c) of the statutes is created to read:

6 973.017 (8) (c) 2. When making a sentencing decision concerning a person  
7 convicted of violating s. 961.437 (2m), the court shall consider as an aggravating  
8 factor the fact that the violation involved the possession of any of the substances  
9 listed in that subsection with intent to deliver or distribute methamphetamine or a  
10 controlled substance analog of methamphetamine and that the person knowingly  
11 used a public transit vehicle during the violation.

**2005-2006 DRAFTING INSERT  
FROM THE  
LEGISLATIVE REFERENCE BUREAU**

LRB-1099/P2BONUSins  
MGD:.....

**INSERT INTO OTHER E-INSERT AT 2/15**

**SECTION ~~1~~** 939.62 (2m) (a) 2m. am. of the statutes is created to read:

939.62 (**2m**) (a) 2m. am. A crime under s. 961.437 (2m).

**SECTION ~~2~~** 939.62 (2m) (a) 2m. d. of the statutes is amended to read:

939.62 (**2m**) (a) 2m. d. A crime at any time under federal law or the law of any other state or, prior to April 28, 1994, under the law of this state that is comparable to a crime specified in subd. 2m. a., am., b., or c.

**History:** 1977 c. 449; 1989 a. 85; 1993 a. 289, 483, 486; 1995 a. 77, 448; 1997 a. 219, 283, 295, 326; 1999 a. 32, 85, 188; 2001 a. 109.

**SECTION ~~3~~** 939.62 (2m) (d) of the statutes is amended to read:

939.62 (**2m**) (d) If a prior conviction is being considered as being covered under par. (a) 1m. b., or 2m. d. as comparable to a felony specified under par. (a) 1m. a. or 2m. a., am., b., or c., the conviction may be counted as a prior conviction under par. (b) only if the court determines, beyond a reasonable doubt, that the violation relating to that conviction would constitute a felony specified under par. (a) 1m. a. or 2m. a., am., b., or c. if committed by an adult in this state.

**History:** 1977 c. 449; 1989 a. 85; 1993 a. 289, 483, 486; 1995 a. 77, 448; 1997 a. 219, 283, 295, 326; 1999 a. 32, 85, 188; 2001 a. 109.



State of Wisconsin  
2005 - 2006 LEGISLATURE

LRB-1099/P2 1

MGD:wlj:rs

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

FRIDAY

Regen

1 AN ACT *to renumber* 961.437 (2) and 961.49; *to renumber and amend* 961.437  
2 (3), 961.437 (4), 961.437 (5) and 961.46; *to amend* 101.10 (title), 101.10 (3) (e),  
3 895.555 (title), 895.555 (1), 938.34 (14s) (am) (intro.), 939.62 (2m) (a) 2m. d.,  
4 939.62 (2m) (d), 948.015 (6), 961.23 (4), 961.23 (5), 961.41 (1r), 961.437 (title),  
5 961.49 (title) and 973.01 (2) (c) 2. a.; and *to create* 101.10 (3) (f), 111.335 (1) (cs)  
6 5., 125.12 (2) (ag) 5m., 125.12 (2) (ag) 6m., 125.12 (4) (ag) 7m., 939.32 (1) (g),  
7 939.62 (2m) (a) 2m. am., 961.01 (14f), 961.22 (3) (b), 961.23 (7), 961.437 (1)  
8 (title), 961.437 (2m), 961.437 (3m) (title), 961.46 (2), 961.49 (2m), 973.017 (8)  
9 (a) 3. and 973.017 (8) (c) of the statutes; **relating to:** pseudoephedrine

1 hydrochloride and other materials used to produce methamphetamine, the  
2 distribution of methamphetamine to minors, and providing penalties.

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*Analysis by the Legislative Reference Bureau*

INSERT → ~~This is a preliminary draft. An analysis will be provided in a later version.~~

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*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

3 SECTION 1. 101.10 (title) of the statutes is amended to read:

4 101.10 (title) **Storage and handling of anhydrous ammonia; theft of**  
5 **liquid nitrogen, anhydrous ammonia, and anhydrous ammonia equipment.**

6 SECTION 2. 101.10 (3) (e) of the statutes is amended to read:

7 101.10 (3) (e) Intentionally take, carry away, use, conceal, or retain possession  
8 of liquid nitrogen, anhydrous ammonia ~~belonging to another~~, or anhydrous ammonia  
9 equipment belonging to another, without the other's consent and with intent to  
10 deprive the owner permanently of possession of the liquid nitrogen, anhydrous  
11 ammonia, or anhydrous ammonia equipment.

12 SECTION 3. 101.10 (3) (f) of the statutes is created to read:

13 101.10 (3) (f) Intentionally release or allow the escape of anhydrous ammonia  
14 belonging to another into the atmosphere. This paragraph does not apply if the  
15 owner has authorized the actor to exercise control over the anhydrous ammonia or  
16 has consented to its release.

17 SECTION 4. 111.335 (1) (cs) 5. of the statutes is created to read:

18 111.335 (1) (cs) 5. Possessing any of the materials listed in s. 961.437 (2m) with  
19 intent to manufacture methamphetamine under that subsection or under a federal  
20 law or a law of another state that is substantially similar to s. 961.437 (2m).

1           SECTION 5. 125.12 (2) (ag) 5m. of the statutes is created to read:

2           125.12 (2) (ag) 5m. The person has been convicted of possessing any of the  
3 materials listed in s. 961.437 (2m) with intent to manufacture methamphetamine  
4 under that subsection or under a federal law or a law of another state that is  
5 substantially similar to s. 961.437 (2m).

6           SECTION 6. 125.12 (2) (ag) 6m. of the statutes is created to read:

7           125.12 (2) (ag) 6m. The person knowingly allows another person, who is on the  
8 premises for which the license under this chapter is issued, to possess any of the  
9 materials listed in s. 961.437 (2m) with the intent to manufacture  
10 methamphetamine.

11          SECTION 7. 125.12 (4) (ag) 7m. of the statutes is created to read:

12          125.12 (4) (ag) 7m. That the licensee has been convicted of possessing any of  
13 the materials listed in s. 961.437 (2m) with intent to manufacture  
14 methamphetamine under that subsection or under a federal law or a law of another  
15 state that is substantially similar to s. 961.437 (2m).

16          SECTION 8. 895.555 (title) of the statutes is amended to read:

17          895.555 (title) **Liability exemption; anhydrous ammonia and liquid**  
18 **nitrogen.**

19          SECTION 9. 895.555 (1) of the statutes is amended to read:

20          895.555 (1) LIABILITY EXEMPTION. Except as provided under sub. (2), any person  
21 who owns, maintains, or installs anhydrous ammonia equipment, as defined in s.  
22 101.10 (1) (b), or who uses anhydrous ammonia or liquid nitrogen for any legal  
23 purpose is immune from any civil liability for acts or omissions relating to the  
24 anhydrous ammonia equipment or to anhydrous ammonia or liquid nitrogen that

1 cause damage or injury to an individual, if that damage or injury occurs during the  
2 individual's violation of s. 101.10 (3) (c), (d), ~~or (e), or (f).~~

3 **SECTION 10.** 938.34 (14s) (am) (intro.) of the statutes is amended to read:

4 938.34 (14s) (am) (intro.) In addition to any other dispositions imposed under  
5 this section, if the juvenile is found to have violated s. 961.41 (1) or (1m) or 961.437  
6 (2m), the court shall order one of the following penalties:

7 **SECTION 11.** 939.32 (1) (g) of the statutes is created to read:

8 939.32 (1) (g) Whoever attempts to commit a crime under s. 101.10 (3) (e) is  
9 subject to the penalty for the completed act, as provided in s. 101.10 (4) (b).

10 **SECTION 12.** 939.62 (2m) (a) 2m. am. of the statutes is created to read:

11 939.62 (2m) (a) 2m. am. A crime under s. 961.437 (2m).

12 **SECTION 13.** 939.62 (2m) (a) 2m. d. of the statutes is amended to read:

13 939.62 (2m) (a) 2m. d. A crime at any time under federal law or the law of any  
14 other state or, prior to April 28, 1994, under the law of this state that is comparable  
15 to a crime specified in subd. 2m. a., am., b., or c.

16 **SECTION 14.** 939.62 (2m) (d) of the statutes is amended to read:

17 939.62 (2m) (d) If a prior conviction is being considered as being covered under  
18 par. (a) 1m. b., or 2m. d. as comparable to a felony specified under par. (a) 1m. a. or  
19 2m. a., am., b., or c., the conviction may be counted as a prior conviction under par.  
20 (b) only if the court determines, beyond a reasonable doubt, that the violation  
21 relating to that conviction would constitute a felony specified under par. (a) 1m. a.  
22 or 2m. a., am., b., or c. if committed by an adult in this state.

23 **SECTION 15.** 948.015 (6) of the statutes is amended to read:

24 948.015 (6) ~~Sections 961.01 (6) and (9) and Section 961.49, relating to~~  
25 ~~delivering and distributing~~ offenses involving an intent to deliver or distribute



1 controlled substances or controlled substance analogs <sup>at</sup> ~~to children~~ on or near certain  
2 places.

3 **SECTION 16.** 961.01 (14f) of the statutes is created to read:

4 961.01 (14f) "Methamphetamine precursor" means ephedrine,  
5 pseudoephedrine hydrochloride, phenylpropanolamine, or any of their salts,  
6 isomers, and salts of isomers that are theoretically possible within the specific  
7 chemical designation.

8 **SECTION 17.** 961.22 (3) (b) of the statutes is created to read:

9 961.22 (3) (b) Pseudoephedrine hydrochloride. This paragraph does not apply  
10 under any of the following circumstances:

11 1. The pseudoephedrine hydrochloride is in a product that contains  
12 therapeutically significant quantities of another active medicinal ingredient.

13 2. The pseudoephedrine hydrochloride is in a liquid or a soft gelatin capsule.

14 3. The controlled substances board has determined, by rule, that the  
15 pseudoephedrine hydrochloride cannot be used readily in the manufacture of  
16 methamphetamine.

17 **SECTION 18.** 961.23 (4) of the statutes is amended to read:

18 961.23 (4) That any person purchasing such a substance at the time of  
19 purchase present to the seller that person's correct name and, address, and, if the  
20 person is purchasing a product to which s. 961.22 (3) (b) applies, an identification  
21 card containing the person's photograph. The seller shall record the name and  
22 address and the name and quantity of the product sold. The purchaser and the seller  
23 shall sign the record of this transaction. The giving of a false name or false address  
24 by the purchaser shall be prima facie evidence of a violation of s. 961.43 (1) (a).

25 **SECTION 19.** 961.23 (5) of the statutes is amended to read:

1           961.23 (5) That no person may purchase more than 8 ounces of a product  
2           containing opium or more than 4 ounces of a product containing any other schedule  
3           V substance other than pseudoephedrine hydrochloride within a 48-hour period  
4           without the authorization of a physician, dentist, or veterinarian ~~nor~~.

5           (6) That no person other than a physician, dentist, veterinarian, or pharmacist  
6           may possess more than 8 ounces of a product containing opium or more than 4 ounces  
7           of a product containing any other schedule V substance ~~be in the possession of any~~  
8           ~~person other than a physician, dentist, veterinarian or pharmacist~~ other than  
9           pseudoephedrine hydrochloride at any time without the authorization of a physician,  
10          dentist, or veterinarian.

11          **SECTION 20.** 961.23 (7) of the statutes is created to read:

12          961.23 (7) That no person other than a physician, dentist, veterinarian, or  
13          pharmacist may purchase more than 9 grams of a product to which s. 961.22 (3) (b)  
14          applies within a 30-day period without the authorization of a physician, dentist, or  
15          veterinarian.

16          **SECTION 21.** 961.41 (1r) of the statutes is amended to read:

17          961.41 (1r) DETERMINING WEIGHT OF SUBSTANCE. In determining amounts under  
18          s. 961.49 (2) (b), 1999 stats., and subs. (1) and (1m), and s. 961.437 (2m), an amount  
19          includes the weight of cocaine, cocaine base, heroin, phencyclidine, lysergic acid  
20          diethylamide, psilocin, psilocybin, amphetamine, methamphetamine,  
21          methamphetamine precursors, methcathinone, or tetrahydrocannabinols or any  
22          controlled substance analog of any of these substances together with any compound,  
23          mixture, diluent, plant material or other substance mixed or combined with the  
24          controlled substance ~~or~~, controlled substance analog, or methamphetamine  
25          precursor. In addition, in determining amounts under subs. (1) (h) and (1m) (h), the

1 amount of tetrahydrocannabinols means anything included under s. 961.14 (4) (t)  
2 and includes the weight of any marijuana.

3 **SECTION 22.** 961.437 (title) of the statutes is amended to read:

4 **961.437 (title) ~~Possession and disposal of~~ Materials used in and waste**  
5 **produced from manufacture of methamphetamine.**

6 **SECTION 23.** 961.437 (1) (title) of the statutes is created to read:

7 961.437 (1) (title) DEFINITIONS.

8 **SECTION 24.** 961.437 (2) of the statutes is renumbered 961.437 (3m) (a).

9 **SECTION 25.** 961.437 (2m) of the statutes is created to read:

10 **961.437 (2m) MATERIALS USED IN MANUFACTURE OF METHAMPHETAMINE.** Except  
11 as authorized by this chapter, any person who possesses a methamphetamine  
12 precursor, red phosphorus, lithium metal, sodium metal, iodine, anhydrous  
13 ammonia, <sup>or liquid nitrogen</sup> ~~or~~ pressurized ammonia ~~with intent to manufacture methamphetamine~~  
14 is guilty of a Class H felony. Possession of more than 24 grams of methamphetamine  
15 precursors shall be prima facie evidence of intent to manufacture  
16 methamphetamine.

17 **SECTION 26.** 961.437 (3) of the statutes is renumbered 961.437 (3m) (b), and  
18 961.437 (3m) (b) (intro.) and 2., as renumbered, are amended to read:

19 961.437 (3m) (b) (intro.) ~~Subsection (2) Paragraph (a)~~ does not apply to a person  
20 who possesses or disposes of methamphetamine manufacturing waste under all of  
21 the following circumstances:

22 2. The methamphetamine manufacturing waste had previously been possessed  
23 or disposed of by another person in violation of sub. (2) par. (a).

24 **SECTION 27.** 961.437 (3m) (title) of the statutes is created to read:

25 **961.437 (3m) (title) WASTE FROM MANUFACTURE OF METHAMPHETAMINE.**

1       **SECTION 28.** 961.437 (4) of the statutes is renumbered 961.437 (3m) (c), and  
2       961.437 (3m) (c) (intro.), as renumbered, is amended to read:

3       961.437 (3m) (c) (intro.) A person who violates ~~sub. (2)~~ par. (a) is subject to the  
4       following penalties:

5       **SECTION 29.** 961.437 (5) of the statutes is renumbered 961.437 (3m) (d) and  
6       amended to read:

7       961.437 (3m) (d) Each day of a continuing violation of ~~sub. (2)~~ par. (a) 1. or ~~(b)~~  
8       2. constitutes a separate offense.

9       **SECTION 30.** 961.46 of the statutes is renumbered 961.46 (1) and amended to  
10      read:

11      961.46 (1) If Except as provided in sub. (2), if a person violates s. 961.41 (1) by  
12      distributing or delivering a controlled substance or a controlled substance analog to  
13      a person 17 years of age or under who is at least 3 years his or her junior, the  
14      applicable maximum term of imprisonment prescribed under s. 961.41 (1) for the  
15      offense may be increased by not more than 5 years.

16      **SECTION 31.** 961.46 (2) of the statutes is created to read:

17      961.46 (2) Notwithstanding s. 961.41 (1) (e), if a person violates s. 961.41 (1)  
18      by distributing or delivering methamphetamine or a controlled substance analog of  
19      methamphetamine to a person 17 years of age or under who is at least 2 years his  
20      or her junior, the person is guilty of a Class B felony.

21      **SECTION 32.** 961.49 (title) of the statutes is amended to read:

22      **961.49 (title) ~~Distribution of or possession with~~ Offenses involving**  
23      **intent to deliver or distribute a controlled substance on or near certain**  
24      **places.**

25      **SECTION 33.** 961.49 of the statutes is renumbered 961.49 (1m).

**SECTION 34.** 961.49 (2m) of the statutes is created to read:

961.49 (2m) If any person violates s. 961.437 (2m) by possessing any of the materials listed in that subsection with intent to manufacture methamphetamine and with intent to deliver or distribute methamphetamine or a controlled substance analog of methamphetamine and the delivery, distribution, or possession takes place under any of the circumstances listed under sub. (1m) (a), (b), (c), or (d), the maximum term of imprisonment prescribed by law for that crime may be increased by 5 years.

**SECTION 35.** 973.01 (2) (c) 2. a. of the statutes is amended to read:

973.01 (2) (c) 2. a. Sections 939.621, 939.632, 939.645, 961.46 (1), and 961.49.

**SECTION 36.** 973.017 (8) (a) 3. of the statutes is created to read:

973.017 (8) (a) 3. When making a sentencing decision concerning a person convicted of violating s. 961.437 (2m), the court shall consider as an aggravating factor the fact that the violation involved the possession of any of the substances listed in that subsection with intent <sup>person intended</sup> to deliver or distribute methamphetamine or a controlled substance analog of methamphetamine to a prisoner within the precincts of any prison, jail, or house of correction.

**SECTION 37.** 973.017 (8) (c) of the statutes is created to read:

973.017 (8) (c) When making a sentencing decision concerning a person convicted of violating s. 961.437 (2m), the court shall consider as an aggravating factor the fact that the violation involved the possession of any of the substances listed in that subsection with intent to deliver or distribute methamphetamine or a controlled substance analog of methamphetamine and that the person knowingly used a public transit vehicle during the violation.

(END)

1

**analysis INSERT**

This bill makes a number of changes in the law relating to the controlled substance methamphetamine and materials used to make it.

***Classification of pseudoephedrine hydrochloride as a controlled substance***

Under current law, each controlled substance is classified in one of five separate schedules. The classification is based on: 1) whether there is a currently accepted medical use for the drug; 2) <sup>the drug's</sup> ~~its~~ potential for being abused; and 3) the nature of the psychological or physical dependence that ~~its~~ <sup>of the drug</sup> use may produce. Schedule I controlled substances are those <sup>that</sup> ~~which~~ have a high potential for abuse and no currently accepted medical use. Schedule V controlled substances are those that have an accepted medical use and that have a lower potential for abuse and produce less dependence when compared with other controlled substances. (Methamphetamine is included in Schedule II.)

In general, a Schedule I controlled substance may not be dispensed, even with a prescription. A Schedule II, III, or IV controlled substance may be dispensed with a prescription. A Schedule V controlled substance may be dispensed without a prescription, but only a registered pharmacist may sell it at retail and only then in certain specified amounts. In addition, the pharmacist must record the name and address of the purchaser and the quantity of the product sold. Penalties for crimes relating to Schedule I and II controlled substances are, in general, more severe than those relating to other controlled substances. Penalties for crimes relating to Schedule V controlled substances are generally the least severe. To illustrate, unlawful delivery of heroin (a Schedule I controlled substance) is a Class C, D, E, or F felony, depending on the amount of the drug involved, while unlawful delivery of any Schedule V controlled substance is a Class I felony, regardless of the amount involved.

This bill classifies pseudoephedrine hydrochloride as a Schedule V controlled substance. The bill also prohibits a person from purchasing more than nine grams of pseudoephedrine hydrochloride within a 30-day period and requires the purchaser to provide the pharmacist selling it with a photo ID. But the classification and the resulting restrictions on sale do not apply if: 1) the pseudoephedrine hydrochloride is in a product that contains therapeutically significant quantities of another active medicinal ingredient; 2) the pseudoephedrine hydrochloride is in a liquid or a soft gelatin capsule; or 3) the Controlled Substances Board has determined that the pseudoephedrine hydrochloride involved cannot be used readily in the manufacture of methamphetamine.

***Possession of methamphetamine precursors***

Current law generally prohibits possessing or disposing of methamphetamine ~~manufacturing waste~~. This prohibition does not apply to legitimate storage, treatment, or clean-up operations. A violation of this prohibition is a Class F felony. Second and subsequent offenses are Class H felonies.

waste resulting from  
the manufacture of

↑ and liquid  
nitrogen

Current law also prohibits possessing or attempting to possess methamphetamine itself. A violation of that prohibition is a Class I felony. In addition, current law prohibits manufacturing, distributing, and delivering methamphetamine and possessing methamphetamine with intent to manufacture, distribute, or deliver it (a "possession with intent" crime). A violation of one of these prohibitions is a Class C, D, E, or F felony, depending on the amount of the drug involved.

This bill prohibits possessing a variety of materials with intent to manufacture methamphetamine. A person who violates this prohibition is guilty of a Class H felony. (See the table at the end of this analysis for the penalties that apply to felonies created in this bill.) The materials that are covered by this prohibition are pseudoephedrine hydrochloride, ephedrine (a Schedule IV controlled substance), phenylpropanolamine, red phosphorus, lithium metal, sodium metal, iodine, anhydrous ammonia, and pressurized ammonia. Possession of more than 24 grams of pseudoephedrine hydrochloride, ephedrine, or phenylpropanolamine can be used without more, to prove the person's intent to manufacture methamphetamine.

In general, a person who is convicted of possessing the materials listed above with intent to manufacture methamphetamine is subject to the same disqualifications, disabilities, increased penalties, and other adverse or unfavorable treatments as a person who is convicted of possessing controlled substances with intent to manufacture, distribute, or deliver them. For example, like possession with intent crimes, this new offense is classified as a "three-strikes" crime, which means that a person who is convicted of this crime and two other offenses that are covered by the relevant statute is sentenced, upon conviction for the last of those three offenses, to life imprisonment without the possibility of parole or extended supervision.

### ***Agricultural chemicals used to make methamphetamine***

Current law prohibits the theft of anhydrous ammonia or equipment used to store, hold, transport, or transfer it or to apply it for an agricultural purpose (anhydrous ammonia equipment). Current law also contains other prohibitions regarding storing, holding, transporting, and transferring anhydrous ammonia. A person who violates one of these prohibitions is guilty of a Class I felony (unless the violation occurs during agricultural activity or while the person is working on anhydrous ammonia equipment with its owner's consent, in which case the person is subject to a forfeiture). civil monetary penalty

This bill prohibits a person from intentionally releasing another person's anhydrous ammonia without the other person's consent. A person who violates this prohibition is guilty of a Class I felony. The bill also makes the statute relating to theft of anhydrous ammonia or anhydrous ammonia equipment applicable to liquid nitrogen and specifies that attempted theft under that statute is subject to the same penalties as those that apply to the completed offense. (Most other attempts are punishable by half of the fine and half of the term of imprisonment that may be imposed for a completed offense.)

In addition, the bill

***Distributing methamphetamine to minors***

Under current law, if a person distributes or delivers a controlled substance to someone who is at least 3 years younger and who is under the age of 18, the applicable maximum term of imprisonment for the crime is increased by five years. Under this bill, if a person distributes or delivers methamphetamine to someone who is at least 2 years younger and who is under the age of 18, the person is guilty of a Class B felony.

***Penalties***

<i>Crime</i>	<i>Maximum fine</i>	<i>Maximum term of confinement</i>	<i>Maximum sentence length</i>
Class B felony	N/A	40 years	60 years
Class H felony	\$10,000	3 years	6 years
Class I felony	\$10,000	1.5 years	3.5 years

***Other information***

Because this bill creates a new crime or revises a penalty for an existing crime, the Joint Review Committee on Criminal Penalties may be requested to prepare a report concerning the proposed penalty and the costs or savings that are likely to result if the bill is enacted.

For further information see the ***state and local*** fiscal estimate, which will be printed as an appendix to this bill.

**INSERT 3/15**

**SECTION 1.** 125.12 (4) (ag) 8m. of the statutes is created to read:

125.12 (4) (ag) 8m. That the licensee knowingly allows another person, who is on the premises for which the license under this chapter is issued, to possess any of the materials listed in s. 961.437 (2m) with the intent to manufacture methamphetamine.



**Barman, Mike**

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**From:** Schneider, Christian  
**Sent:** Wednesday, February 23, 2005 1:42 PM  
**To:** LRB.Legal  
**Subject:** Draft review: LRB 05-1099/1 Topic: Methamphetamine

It has been requested by <Schneider, Christian> that the following draft be jacketed for the SENATE:

Draft review: LRB 05-1099/1 Topic: Methamphetamine